

JUDICIAL INDEPENDENCE IN NIGERIA: BETWEEN GLOBAL TREND, DOMESTIC REALITIES AND ISLAMIC LAW

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ABSTRACT

Judicial independence has its origin in the theory of separation of powers. As for the judiciary, the theory means both the judiciary as institution and all individual judges and other personnel must be able to carry out their professional responsibilities free from any influence or interference by the Executive or Legislature or any other person or institution outside or within the judiciary. Undoubtedly, it is only an independent judiciary that can competently provide the necessary checks on the excesses of other arms of government particularly on breaches of rights and freedoms of the citizenry. This paper establishes that independence of judiciary is an indispensable ingredient of good governance. It also analyses judicial independence in Nigeria in line with some global trends and discovered ironically that even though the Nigerian Constitution guarantees one's rights to have one's cause heard by an independent and impartial judge, it does not guarantee institutional independence of Nigerian judiciary at all. And this could have been the reason why the fortunes of Nigerian judiciary is day by day dwindling as it is compelled by lack of constitutional guarantees to always beg either the executive or the legislature for one 'favor' or another. The paper also analyses some of the causes of the persistent crisis in the Nigerian judiciary and also highlights on some lessons to be learnt from judicial independence under Islamic law.

Keywords: Judiciary, judges, interference, impartiality, fairness

INTRODUCTION

Judicial independence or independence of judiciary has its origin in the theory of separation of powers. By this theory the Executive, the Legislature and the Judiciary are three separate, distinct and independent branches of government; each arm is independent of the other arm in all it gets and does. As for the judiciary, the theory means both the judiciary as an institution and all individual judges presiding over cases must be able to carry out their responsibilities free from any influence or interference by the Executive or Legislature or any other person or institution. This principle therefore emphasizes that the judiciary should be separated from legislative and executive power, and shielded from inappropriate pressure from these branches of government, and from private or partisan interests. Ideally, independence of judiciary connotes 'complete' judicial freedom in all its ramifications. Scholars and legal writers have for long attempted unsuccessfully to provide convincing answers as to what are the exact conditions required for judicial independence. Is it about absolute budgetary control?¹ Is it about its independence to choose or select its own members without interference from the executive? Or is it about the security of tenure of individual judges? Is it about the decision-making and freedom to render judgments without any influence either from the executive or the legislature or the public? I will briefly touch a number of these propositions in this paper.

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¹ Pilar Domingo, (2000) *Judicial Independence: the Politics of the Supreme Court in Mexico*, 32 J. LATIN AMERICAN STUDIES 705

GLOBAL TREND

Interestingly and perhaps for its importance, all the international human rights conventions and declarations and other regional human rights instruments recognize the notion of independence of judiciary in their provisions by guaranteeing the right to fair hearing in civil and criminal proceedings before an independent and impartial court or tribunal. Legal scholars, international human rights organizations and human rights activists all have emphasized the potentially important role an independent judiciary can play in good governance and in securing constitutionally guaranteed rights. In fact “some assert that it is the indispensable link in the machinery for securing individual protection against states’ human rights abuses”.² Undoubtedly, it is only an independent judiciary that can safeguard good governance by providing the necessary checks on the excesses of other arms of government particularly on breaches of rights and freedoms of the citizenry.

Article 10 of the Universal Declaration of Human Rights, Article 14(1) of International Covenant on Civil and Political Rights, Article 26 of the African Charter on Human and Peoples Rights, Article 8(1) of the American Convention on Human Rights and Article 6(1) of the European Convention on Human Rights all guarantee the right of *everyone to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*. At the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985, the General Assembly adopted the Basic Principles on the Independence of the Judiciary³, which set forth standards for achieving independent judiciary for countries all over the world. Although the basic principles do not have a force of law, they have been recognized internationally as setting model for countries on judicial independence. And over the past two decades, there has been established trend globally for adopting these principles in constitutions of several countries. Many of the constitutions written after 1970s, constituting two thirds of world’s constitutions have adopted certain provisions of these principles under their bill of rights, directly or indirectly.⁴ Generally speaking, these principles “represent a substantial degree of global consensus on what judicial independence is or should be”⁵.

THE TREND IN NIGERIA

In Nigeria, section 17(1)(e) of the Nigerian Constitution 1999 [CFRN] provides that “the independence, impartiality and integrity of Courts of Law, and easy accessibility thereto shall be secured and maintained”. Section 36(1) also guarantees right of every person to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. Ironically, the word “independence” was mentioned only nine times in CFRN and the phrase “judicial independence” or “independence of judiciary” has never been mentioned at all. Nevertheless, under section 171(e) of the non-justiciable Chapter II in furtherance of its social order the Nigerian state shall strive to ensure the maintenance of the “independence, impartiality and integrity of courts of law and easy accessibility thereto”. It can also be argued strongly that Section 36(1) only guarantees one’s rights to have one’s cause heard by an independent and impartial judge and does not guarantee institutional independence of Nigerian judiciary at all. And this could have been the

² Linda Camp Keith, *Judicial Independence and Human Rights Protection Around the World* Retrieved from <https://www.utd.edu/~lck016000/JudicatureJudicialIndependence.pdf>, accessed on 20th January, 2014

³ See Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

⁴ Albert P. Blaustein, Gisbert H. Flanz (2002) *Constitutions of the Countries of the World* (Oceana Publications) Vol. 52

⁵ *ibid*, Linda Camp Keith

reason why the fortunes of Nigerian judiciary is day by day dwindling as it is compelled by lack of constitutional guarantees to always beg either the executive or the legislature for one financial favour or another. The Chief Justice of Nigeria, Hon. Justice Mariam Aloma Mukhtar had on Monday, September 23, 2013, while inaugurating the 2013/2014 Legal Year mentioned this worrisome concern when she said:

“Statistics have shown that funding from the Federal Government has witnessed a steady decline since 2010, from N95bn in that year to N85bn in 2011, then N75bn in 2012 and dropped again in the 2013 budget to N67bn. Indeed, with this, if the amount allocated to the extrajudicial organisations within the judiciary is deducted, the courts are left with a paltry sum to operate”⁶

However, in the last two or three appropriation years the National Assembly has been engulfing over N150bn and the executive has “equally being taking good care of itself with more jets being added to the presidential fleet and humongous amount in the neighborhood of a billion naira appropriated for meals and incidentals, yet the fortunes of Nigeria’s judiciary dwindles.”⁷ Of course this is unbelievable. Even though the drafters of the 1999 Constitution introduced the National Judicial Council [NJC] in good faith to secure independence of Nigerian judiciary, practically speaking for a number of reasons, political and non-political, and even constitutional, as far as budgetary allocation and control is concerned the NJC is nothing to the executive and legislature but a toothless bull dog. It should be noted that, a financially handicapped judiciary couldn’t safeguard good governance or protect the rights and freedoms of citizenry.

Appointment of Judicial Officers in Nigeria

Under the Nigerian Constitution 1999, as far as the appointment of judicial officers is concerned the National Judicial Council is the dominant agency constitutionally responsible for making recommendations of qualified candidates to high bench at state and federal levels.⁸ Its recommendations for appointment by the President is subject to the confirmation of the Senate in some cases like in the case of Chief Justice of Nigeria, Justices of the Supreme Court, President of the Court of Appeal and Chief Judge of the Federal High Court, Chief Judge of the High Court of the FCT, Grand Kadis of the Sharia Court of Appeal, Abuja and President of the Customary Court of Appeal Abuja.⁹ Justices of the Court of Appeal, judges of the Federal High Court, judges of the High Court of FCT, Kadis of the Sharia Court of Appeal of FCT and judges of the Customary Court of Appeal of FCT are appointed by the President on simple recommendation of the NJC without approval of the Senate.¹⁰ For the appointment of Chief Judge of the state, Grand Kadi of the Sharia Court of Appeal and the President of the Customary Court, the Governor shall make the appointment on the recommendation of the NJC subject to the confirmation of the State House of Assembly.

⁶ The Punch, October 19th, 2013. Retrieved from <http://www.punchng.com/opinion/the-many-travails-of-nigerian-judiciary/>

⁷ Jide Ojo, *The Many travails of Nigerian Judiciary*, Punch, October, 9th 2013 available at <http://www.punchng.com/opinion/the-many-travails-of-nigerian-judiciary/> accessed on 12th January, 2013

⁸ Section 1, Part 1 of the Third Schedule to the 1999 Constitution

⁹ Sections 231(1);(2); 238(1); 250(1); 261(1) and 266(1) all of the 1999 Constitution of the Federal Republic of Nigeria

¹⁰ Sections 238(2); 250(2); 256(2); 261(2) and 266(2) all of the 1999 Constitution of Federal Republic of Nigeria

It is to be noted that in Nigeria like in many countries the executive – governor of a state or the President, is surprisingly making majority of the judicial officers' appointments at both state and federal levels. It can be argued that appointment by the executive does not in itself raise any doubt about the independence of judiciary of a country or of a particular judge concerned. In New Zealand for instance, Justices of the Supreme Court, Court of Appeal and judges of High Court, are appointed by the Governor-General on the recommendation of the Attorney General advised by the Chief Justice and the Solicitor-General. For appointments to district courts, the Attorney General who receives advice from the Chief District Court Judge and the Secretary for Justice advises the Governor-General.¹¹

In the United States, the President of the United States, with the approval of the U.S Senate, appoints all Article III Judges i.e Justices of the Supreme Court and Court of Appeals and district judges. And traditionally, Presidents “most often appoint judges who are members, or at least generally supportive, of their political party”¹² – however, that doesn't mean that judges are given appointments solely for partisan reasons. In United States each state has its own state judiciary, including the Supreme Court. There are varied strange patterns of appointment that evolved over time. Generally, for appointment to the high court, there is a pattern in about eight states i.e Alabama, Illinois, Louisiana, New Mexico, New York, Pennsylvania, Texas, West Virginia by which judges run on a party ticket as republicans or democrats and get appointed on that platform. Thereafter, they run for uncontested non-partisan elections to retain their offices. And in Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, Wisconsin judges are initially appointed on merit and years after they run for an election to retain their offices on the basis of their judicial record.¹³ In 1986 three Justices of the Supreme Court of California were recalled because of their vocal opposition to death penalty.

Cumulatively therefore, it is not strange that in Nigeria, just like in Russia, US and Brazil that appointments of the superior courts judges and justices are being made by the executive. There is no doubt that the NJC is established by the Constitution to ensure independence of the judicial officers even from their appointment and to minimize executive interference, influence and manipulation. Nevertheless, its composition has been subject to a number of scornful criticisms. It has been argued that the composition of NJC has grossly violated the principle of federalism,¹⁴ is full of federal dominance and states have not been given any role to play in the appointment. The trend for selection globally leans towards a very widely publicized transparent mechanism, which involves wide consultations and in some places, advertisement of judicial vacancies, publicity of candidates' names, backgrounds, qualifications etc. It is also best practice globally that the public are invited to comment on the shortlisted candidates. The judicial councils should also compose not only judicial officers but other actors like lawyers, law professors, judges of inferior courts so as to enhance the quality of the selection and minimize possible influence from the executive or partisan selection from other judicial officers in the council or even influence by the chief justice or other senior judges. In some countries like Chile,

¹¹ See New Zealand Judicial Appointment Protocol 2013 Retrieved from http://www.crownlaw.govt.nz/artman/docs/cat_index_6.asp accessed on 23rd January, 2014

¹² See *How the Federal Courts are Organized: Federal Judges and How they Get Appointed*, Retrieved from <http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu3c&page=/federal/courts.nsf/page/A783011AF949B6BF85256B35004AD214?opendocument> accessed on 13th September, 2013

¹³ See *ABA Fact Sheet on Judicial Selection Methods in The States*, Retrieved from http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf, accessed on 12th January, 2013

¹⁴ J. O. Akande, (2001)*Introduction to The 1999 Nigerian Constitution*Lagos: NIJ Professional Publishers, at 496 – 49

even before nominating candidates to judicial council, transparent examination is being conducted. When a candidate passes the exam his name is then submitted to the council for further verification and public tests.¹⁵ Diversity is also some thing to be considered during judicial selection. A judiciary that reflects the diversity of its country “is more likely to garner public confidence”¹⁶ Nevertheless, under section 288(1) of the 1999 Constitution of Federal Republic of Nigeria the President is enjoined while appointing justices of the Supreme Court and the Court of Appeal to have regard to the need to ensure there are among them persons learned in Islamic personal law and persons learned in Customary law.

Generally speaking, there is no guidance globally as to one pattern of appointing judicial officers. The most important is that regardless of the pattern of selection used, the qualifications and personal integrity of the persons to be appointed should always constitute the criteria for the selection. This is exactly what Principal 10 of the Basic Principles.

Finally, it is to be noted however, that in countries where politicians are making judicial appointments, the trend leans more towards accountability in the judicial affairs rather than total independence of the judiciary.

Security of Tenure

This is the notion that once appointed, a judge cannot be removed during his term of office except for good cause i.e unethical or unprofessional conduct or unfitness upon following formal proceedings or hearing. A judge who can be removed at any time is naturally vulnerable to both external and internal pressures to do what is wrong. In some countries, like in France and Germany, not only that a judge cannot be removed without decision of a court, no judge can even be transferred or promoted without his consent. Security of tenure of judicial officers in Nigeria is a matter of constitution and is covered under sections 291 and 292 of CFRN. Accordingly, all heads of superior courts for federation and state in cannot be removed from office before their age of retirement except by the President or governor acting on an address supported by two-thirds majority of the Senate or House of Assembly for the state.

However, section 291 and 292 do not in any way provide the necessary security of tenure to Nigerian judicial officers based on the best practices globally. In light of realities of the global trends on security of tenure of judicial officers, the shallowness of section 292 of the 1999 Constitution is surprising. It literally left the mechanism for removing judicial officers on the hands of politicians. All that the section requires the President or the Governor to do is to garner 2/3 political support in the Senate or House of Assembly for an ordinary letter stating that the judicial officer be removed for misconduct or contravention of Code of Conduct, inability to discharge his functions as a result of infirmity of mind etc.

The most surprising constitutional defect of the section 292 is that it does not at all provide any opportunity to the judicial officer to be removed to defend himself in person or by a legal practitioner of his own choice before the Senate or House of Assembly. It does not contemplate a hearing at all, either before the President or the Governor as the case may be makes his political address before the Senate or the House of Assembly. This is a clear dreadful breach of section 36 of CFRN guaranteeing right to fair hearing. Constitution against itself! It is

¹⁵ See *Guidance for Promoting Judicial Independence and Impartiality* (Office of Democracy and Governance, USAID, 2002) pp. 16 - 18 Retrieved from <http://www.usaid.gov/democracy/> accessed on 14th December, 2006

¹⁶ *ibid*, pg. 19

devastating to find this arrangement in the constitution of the Federal Republic of Nigeria, especially as it relates to the offices of highly placed judicial officers like the Chief Justice of Nigeria, Chief Judges of States etc.

Surprisingly however, the constitutional arrangement for the removal of judicial officers in Nigeria under sections 276 and 277 of the 1989 Constitution of Federal Republic of Nigeria was much more in line with global best practices. One step forward, ten steps backward!

It is to be submitted that in jurisdictions where there is stringent and transparent impeachment procedure after a trial, judges are more confident and independent because they cannot deliver a decision today and wake up tomorrow just to find out on the dailies they are removed in the night. In the US for example, in the last 222 years, only “fifteen federal judges have been impeached. Of those fifteen: eight were convicted by the Senate, four were acquitted by the Senate, and three resigned before an outcome at trial.”¹⁷ In the last 222 years the US has only 17 Chief Justice, while Nigeria had 12 in the last 53 years. In the last 222 years the US had only 112 Justices of the Supreme Court and Nigeria has had 95 in 57 years.¹⁸

Financial Independence:

Funding judiciary in Nigeria is matter provided for by the 1999 Constitution. The Constitution has recognized directly and indirectly financial autonomy of the judicial arm in very clear terms. In fact funding the Nigerian judiciary is granted the status of “first line charge” by the Constitution.

In 2004 the total budgetary allocation to NJC was N30, 000,000,000 (2.3% of the Nigeria’s budget) while in 2012 the allocation was N85, 000,000,000 (1.7% of the country’s budget). And in 2013 the sum of 67,000,000,000 was allocated to NJC – just 1.3% of the country’s budget, which was N4,924,604,000,000. One can see how the institutional independence of Nigerian judiciary is corroding and crumbling year after year by the disproportionate treatment judiciary gets through ‘conspiracy’ between the executive and legislature. The negative implication of this doesn’t stop at the judiciary as an institution; it is more detrimental and injurious to a common man than to the judiciary itself. This is because “all the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.”¹⁹ A poor-funded judiciary breeds poor members, intellectually and rationally who do not care about efficiency, honesty or integrity. The poor state of Nigerian judiciary and its catalogue of disclosed and undisclosed unprofessional allegations, corruption, bribery and judgment procurement is not unconnected with its poor funding; so also the poor performance of some of the judges at state and federal level. Charles Evans Hughes told us that:

“A poor Judge [in terms of integrity] is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are haled before a Judge whose mental or

¹⁷ Judgepedia at http://judgepedia.org/impeachment_of_federal_judges accessed on 29th January, 2014

¹⁸ A case for Elongation of Tenure of Nigerian Judges, Retrieved from <http://www.channelkoos.com/index.php/features/301-a-case-for-elongation-of-tenure-of-nigerian-judges>, accessed on 19th January, 2014

¹⁹ Andres Jackson, Brainy Quotes, available at <http://www.brainyquote.com/quotes/quotes/a/andrewjack401401.html> accessed on 23rd January, 2014

moral goods are inferior. An honest..., able and fearless Judge is the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law"²⁰

The situation is even worse in the state judiciary as pointed out by the former Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher when he said:

"It is regrettable that some state chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the judiciary in several states still goes cap in hand to the executive begging for funds...The plight of the state judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of Judges/security of tenure is the subject of political theatrics."²¹

JUDICIAL INDEPENDENCE UNDER ISLAMIC LAW

Appointment of judges in Sharia is being done objectively and independently by the head of government based on merit or by election by group of prominent scholars. This is to ensure that upon appointment judges are independent of the government that appoints them. One very unique feature of judiciary in Islam is its independence. In Islam, judicial rulings, decisions and interpretations are based on Quran and Sunnah of the Holy prophet (SAW). This guarantees that the rulings and decisions would be quite accurate, precise and perfect free from personal whims of the individual judges. And this also means that decisions and interpretations as opposed to other legal systems are going to be uniform and the same all over Islamic state and would continue for generations. And for this reason therefore judges under Sharia are further enjoined to pass down their decisions without any discrimination between the rulers and the ruled, rich or poor, old or young. Deciding cases based on social status, political affiliation or influence is not only unethical and wrong in Sharia but is a crime and deviation from Allah. The Holy Prophet (SAW) was reported to have said:

"Judges are of three types, two of whom will be in Hell and one in Paradise: a man who judges unjustly and knowingly will be in Hell; a judge who has no knowledge and destroys people's rights will be in Hell; and a judge who judges in accordance with the truth will be in Paradise".²²

It should be noted however, that even though judicial decisions in Sharia must be based on Quran and Sunnah, the judge himself is encouraged to exercise *ijtihad* (independent reasoning)

²⁰ Charles Evans Hughes, quoted in Itse Sagay: (1988) *Recent Trends in the Status and Practice of the Rule of Law* Ibadan: ASUU Press, pg. 36

²¹ Hon. Justice Dahiru Musdapher, *The Nigerian Judiciary: Towards reform of the Bastion of Constitutional Democracy* (Institute of Advanced Legal Studies, 2011) Retrieved from <http://nials-nigeria.org/pub/THE%20NIGERIAN%20JUDICIARY%20Towards%20Reform%20Of%20The%20Bastion%20Of%20Constitutional%20Democracy.pdf> accessed on 11th January, 2014

²² Narrated by Al-Tirmizi, book of *Judgments* p.1322, Abu Dawud (3573), and Ibn Majah (2315). Al-Albani said the hadith is correct; review: Sahih Al-Jami (4447)

on issues without clear reference from Quaran, Sunnah, analogy or consensus of Islamic jurists. The Holy Prophet was reported have said:

"When a judge gives a decision, having tried his best to decide correctly and is right, there are two rewards for him; and if he gives a judgment after having tried his best (to reach a correct decision) but erred, there is one reward for him"²³

Judges under Sharia must also be paid adequate salary in order to prevent them from taking gifts or bribe. The Prophet (peace be upon him) said:

"Whosoever from you is appointed by us to a position of authority and we gave him fees, what he takes more than that would be misappropriation (of public funds)"²⁴

A judge is Sharia as opposed to other legal system is not only a judicial officer but also religious officer and his authority included performing other functions and duties not purely judicial because of his knowledge of Islamic law. These include performing prayers at mosque, supervising religious places, taking custody of missing funds, missing persons, supervising pilgrimage, delivering Friday sermons etc.²⁵ Shams-al-Din Ibn Tulun told us Taj-al-Din Al-Subki one of prominent judges of Damascus, was a judge, taught in school, delivered Friday sermons at Tulun mosque, gave fatwas at Da-al-Adl (the house of justice) etc.²⁶

Under the Islamic law judges are expected to be just and to administer the law as ordained by Allah without giving any regard to the parties' social status or political position. Al Sayuti in his *Tarikh Al-Khulafa* (the history of caliphs) also mentioned another story demonstrating full independence of judiciary under Islamic Law. He said that there was a land dispute between a marchant and a commander of the Caliph Jaafar al Mansur. Caliph Jaafar Al-Mansur wrote a letter to the judge of Basra Swar ibn Abdullah requesting him to henceforth confiscate the piece of land and deliver the title to his commander. Swar wrote back to Caliph that the said land belonged to the merchant not the commander and he could not confiscate anything which by evidence was established to belong to someone. When the Caliph insisted upon his request and without success he said: "By Allah, I spread justice, and my judges guided me to the right".

Under Islamic law judges can summon caliphs and governors for testimonies or to defend cases filed against them. In one incident porters of Madina filed an action against Caliph Jaafar al Mansur who wanted to eject them to Levant. The case came before Muhammad ibn Imran Al-Talhi jdge of Madina. The caliph was summoned. The judge warned his secretary not to call the Caliph with his title but with his ordinary name a party to the suit. When the Caliph arrived the court ibn Imran did not stand up to welcome him. At the end of the suit, judgement was given in favourt of the porters i.e against the Caliph. It is at the end o fthe proceedings that inb Imran greeted the Caliph. Al-Mansur was happy with the conduct of the judge and granted him Ten Thousand Dinars.²⁷

²³ Narrated by Al-Bukhari : *Book of Judgments* (6919), and Muslim: *Book of Judicial Decisions* (15)

²⁴ Narrated by Abu Dawud on the authority of Buraydah ibn Al-Hasib: *Book Tribute, Spoils, and Leadership* (2943)

²⁵ Ibn Kathir: *Al-Bidayah wa Al-Nihayah* 13/380

²⁶ Shams-al-Din ibn Tulun: *Qudat Dimashq* (the Judges of Damascus), p104.

²⁷ Alsuyuti, *ibid*, 229

CONCLUSION

Mere googling the phrase “crisis in Nigerian judiciary” will send a message that all is not well there. The result is extraordinarily revealing of the so many crisis bedeviling our courts, our judges and other officers of courts ranging from demanding or accepting bribes, judgement procurement to some light unethical practices of being partisan.

One of the shocking reports is from the Nigerian Tribune (online) of 26th August, 2011. The report is titled “*FG uncovers corruption in judiciary – N106 bn traced to judgement procurement-judges own luxury houses in UK, UAE, S/Africa*”.²⁸ The paper claimed to base its findings on a ‘secret report’ submitted to the federal government “which indicted a number of judicial officers of monumental corruption”. The paper alleges that according to investigations some properties were bought globally especially in Dubai, UAE, South Africa and London and the real owners were believed to be Nigerian judicial officers whose total emoluments cannot in anyway justify the purchases. The report further stated, a source privy to the paper informed them that some of the judicial officers were “found to send their children to some of the most expensive schools in the world, without taking loans.”²⁹

During a 2 day workshop on the rule of law organized by the NBA the CJN, Hon. Justice Mariam Aloma Mukhtar had in May 2013 said that “21 judges are being investigated for alleged breaches of principles of the Code of Conduct for Judicial Officers, in the on-going efforts of the National Judicial Council (NJC) at overhauling and reforming the judiciary”.³⁰

Another disturbing story appeared on the Vanguard of 4th January 2014 captioned “EFCC Moves to Prosecute Seven Corrupt Judges”.³¹ The most disturbing is that “suspected judges are from the State and Federal High courts as well as the Court of Appeal”.³²

Of course one may find it difficult to ascertain the authenticity of some of these reports. Nevertheless, objectively speaking, even if these reports contain some doubtful facts and speculations, the allegations ought to be investigated in a very transparent way so that the public will know what really is happening. This is because in a transparent society, media reports like this one are like canary songs. Coal miners used to carry caged canaries into the mines with them. When the canaries stopped singing, they knew they were in trouble and they had better get out fast. The media in government and other large organizations are, in a way, our canaries. When they are free to ‘sing,’ those institutions are healthy. When they are silenced, we are in trouble.

The big question then remains thus: how can Nigerians have a crises-free judiciary? Nigerians can have crises-free judiciary when the government ensures the implementation of constitutional arrangements guaranteeing independence of judiciary. Nigerian judiciary can be crises-free when the government ensure full implementation of all the principles in the international instruments guaranteeing ‘inalienable right’ of judiciary to be independent - like the

²⁸ Rivers State, Television Channel 22, available on <http://www.rstv22.tv/component/content/article/1-latest-news/278-fg-uncovers-corruption-in-judiciary.html> culled from Nigerian Tribune Newspaper pf 26th November, 2011 accessed on 21 May, 2012

²⁹ *ibid*;

³⁰ The Nigerian Voice, of 15th May, 2013, available at <http://www.thenigerianvoice.com/nvnews/113670/1/njc-probing-21-judges-for-corruption-cjn.html> accessed on 17th June, 2013

³¹ Available on <http://www.vanguardngr.com/2014/01/efcc-moves-prosecute-seven-corrupt-judges/> accessed on 10th January, 2014

³² *ibid*;

Basic Principles on the Independence of the judiciary 1985, like the Basic Principles on the Role of Lawyers, 1990. Nnaemeka-Agu:

“What cannot be doubted is that a judge must be completely independent, free and freed from all forms of external influence and control, before he can perform his functions well. This is true of judges all over the world. But, it is perhaps true in Nigeria where naira is the lord and some people think that even justice is a commodity which can be bought and sold.”³³

Unless judges play their respective key roles to the full in maintaining justice in Nigerian society impartially, there is a risk that a culture of impunity will prevail and justice can be for sale. Independence of judiciary connotes so many things. The judiciary must attain independence in all its ramifications. It must independently handle all matters pertaining to it. It must have independence as to administrative and financial matters. It must be independent as to its decision-making, appointments and promotions, training and education etc

The Chief Justice of Nigeria while marking commencement of the 2012/2013 legal year and the inauguration of 25 new Senior Advocates of Nigeria at the Supreme Court in Abuja said:

“It is the judiciary which has to ensure that the law is observed and that there is compliance with the requirements of law on the part of the government. Our courts should be independent and subject only to the Constitution and the law, which they apply impartially, without fear, favour and prejudice. Without judicial independence, there can be no preservation of democratic values.”³⁴

³³ P. Nnaemeka-Agu, (1993) *Enhancing the Efficacy and Independence of the Judiciary in the Third Republic*4(3) JUS 9 at 16.

³⁴ The Nation, of 18th September, 2012 available at <http://www.thenationonline.ng.net/2011/index.php/law/61811-how-to-ensure-judicial-independence-by-lawyers.html> accessed on 13th October, 2012